Supreme Court, U.S.
FILED
93-1007 DEC 14 1993

No.

IN THE

Supreme Court of the United States

October Term, 1993

ROCHEUX INTERNATIONAL, INC.,

NOAH WONG,

Petitioners,

vs.

FULBRIGHT & JAWORSKI,

Respondents.

Petition for Writ of Certiorari to the Supreme Court of the State of California

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Fulbright & Jaworski ("FJ") was Petitioners' former counsel. FJ committed very serious legal malpractice and unethical misconduct. Petitioners terminated FJ, requested FJ to execute a substitution of attorney and to transfer all files to petitioners' new counsel because this action has been scheduled for trial. FJ refused to comply with either of the requests. Petitioners lost in the jury trial. Given the foregoing, the issue for review are:

I. WHETHER the California Courts' denial of petitioners' right to counsel, right to fair trial and absolute right to promptly obtain the substitution of attorney and files from their former counsel are constitutional and legal under federal law.

II. WHETHER the California court's dismissal of the appeal on the ground of mootness are unconstitutional and inconsistent with the federal law when the file was not completely transferred and where FJ admitted that it still kept the file.

III. WHETHER the California courts, in improperly dismissing Petitioners' Appeal where Fulbright & Jaworski failed to serve its motion to dismiss and its counsel's declaration upon Petitioners' Attorney of Record, violated petitioners' right to due process of law.

LIST OF PARTIES

The parties to the proceedings below were Plaintiffs/Petitioners Rocheux International Inc. ("Rocheaux"), a California corporation, and Noah Wong, an individual (collectively Petitioners"), and Defendant/Respondent Fulbright & Jaworski ("FJ"), a Texas partnership.

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I. OPINIONS BELOW

The opinion of the Supreme Court of California dated September 15, 1993, which denied the petition for review is unreported and is attached hereto as Petitioners' Appendix A. The judgment of the Court of Appeal dated June 17, 1993, which dismissed the appeal as "moot", is attached hereto as Appendix B. The decision of the trial court dated August 5, 1991 requesting Petitioners to send its former counsel FJ another letter regarding what disposition Petitioners desired with respect to its files is attached hereto as Appendix E.

II. STATEMENT OF JURISDICTION

28 U.S.C. 1651 and the Supreme Court Rule 10.1(c) provide that this Court will review a state judgment by writ of certiorari if "a state court . . . has

decided an important question of federal law which has not been, but should be, settled by this court, or has decided a federal question in a way that conflicts with applicable decisions of this court."

The California Supreme Court's judgment in question was entered on September 15, 1993. The judgment denied Petitioners' petition for review of a case involving constitutional as well as other federal issues.

This Petition for writ of certiorari was filed within 90 days of September 15, 1993, as required by 28 U.S.C Section 2101(c) and Supreme Court Rules 13.1 and 13.4. Jurisdiction is proper under 28 U.S.C. Section 1254(1).

III. FEDERAL LAW INVOLVED

Petitioners hereby seek to finally resolve the important questions of law presented in this case which have broad national public policy implications and practical consequences for litigants in the United States of America:

I. The California Courts' denial of petitioners' right to counsel, right to fair trial and absolute right to promptly obtain the substitution of attorney and files from their former counsel is unconstitutional and illegal under federal law.

II. The California courts' dismissal of the appeal on the ground of mootness is unconstitutional and inconsistent with the federal law when the file was not completely transferred and where FJ

admitted that it still keep the file.

III. The California courts, in improperly dismissing Petitioners' Appeal where Fulbright & Jaworski has failed to serve its motion to dismiss and its counsel's declaration upon Petitioners' Attorney of Record, violated petitioners' right to due process of law.

IV. STATEMENT OF CASE

On February 24, 1987, Rocheux International, Inc., the petitioner, filed a suit against Goss Plastic Film Corporation ("Goss") in the Superior Court of Los Angeles County (case no. C637727) for overdue payment of goods sold and delivered to Goss. On the same day, Goss filed a suit against Rocheux, Wong and others. (Case no. C637726). These two actions were later consolidated (Case No. C637726).

Fulbright & Jaworski ("FJ") was Petitioners' attorney of record since January, 1991. FJ refused to do anything to protect petitioners' interest when the case was close to trial. Since early May, 1991, petitioners' new counsel has sent several faxes and letters to FJ's counsel requesting execution of the substitution of attorney and transfer of the files. FJ refused to do either, and refused to take any steps to protect petitioners' interest. Rule 3-700 (D) of California Rules of Professional Conduct ("CRRC"), which is also adopted by the federal courts and all other state courts of the United States, provides that: "A member whose employment has terminated shall: (1) subject to any protective order or non--disclosure agreement promptly release to the client, at the request of the client, all the client papers and property. 'Client papers and property includes correspondence,

pleadings, deposition transcripts, exhibits, physical evidence, expert's report, and other items reasonably necessary to the client's representation, whether the client has paid for them or not; ... (emphasis added)."

After presenting petitioners' authorization letter ("Client Letter") and substitution of attorney executed by petitioners and making more than 20 requests, petitioners filed a motion in the California Superior Court requesting FJ to execute the substitution of attorney and to transfer the files, because as several motions were pending and the trial was imminent. FJ and its counsel David Eisen deceived and colluded the state court to request petitioners to send an additional letter to FJ.

On August 9, 1991, Petitioners'

attorney appealed. On August 29, 1991, FJ turned over part of the files to petitioners' current counsel. On September 6, 1992, FJ's counsel Eisen sent a letter to Attorney Silverstrom admitting that FJ still kept petitioners' files. See Appendix G.

On June 14, 1993, the California Court of Appeal notified FJ that it was in default and shall serve and file its brief within 15 days. On June 17, 1993, the California Court of Appeal dismissed the appeal as "moot", because FJ had turned over only part of files. See Appendix B.

Petitioner filed a motion to vacate the dismissal. However, the California Court of Appeal denied the motion on July 19, 1993. Petitioners then filed a petition for review with the Supreme Court of California on July 27, 1993, and the

petition was denied on September 15, 1993.

V. REASON FOR ISSUING A WRIT OF CERTIORARI

I. PETITIONERS WERE DEPRIVED OF THEIR CONSTITUTIONAL RIGHT TO FAIR TRIAL AND ABSOLUTE RIGHT TO PROMPTLY OBTAIN THE SUBSTituTION OF ATTORNEY AND FILES FROM FJ.

It is a well established legal norm in this nation that a client has absolute right to terminate his or her attorney at any time, with or without cause. As a logically corollary to this norm, a discharged attorney has an absolute duty to promptly transfer the entire file to the new counsel. The legal philosophy behind such relation between a client and an attorney is to guarantee the fundamental right that a citizen has in this nation: the right to have effective assistance of counsel. U.S. v. King, D.C.Cal. 1982, 536 F.Supp. 253 (1982); Robinson v. Swenson,

D.C.Mo. 1971, 331 F.Supp. 483 (1971).

In this instant case, FJ refused to comply with its absolute duty to promptly turn over the client's trust fund and the client's files for more than two years and only turned over part of the files approximately four months after the client terminated the FJ law firm's representation and after Petitioners filed a motion to compel. Petitioners lost the case as a result of FJ and FJ's counsel David Eisen's dilatory tactics.

Under federal case law, the client's right to counsel and the right to substitution of a new attorney, the former attorney's duty to transfer the entire files to a new attorney promptly are universally established. Resolution Trust Corporation v. H.----,P.C. 128 F.R.D. 647, 648. This is also a litigant's fundamental

right to access to the court. A long line of California case law also holds that it is a breach of absolute duty imposed by disciplinary rules pertaining to withdrawal and discharge of an attorney for an attorney to retain a client's files after discharge or to fail to forward the client's files to a successor attorney: Ross v. State Bar (1989) 49 Cal. 3d 646, 262 Cal. Rptr. 702, 779 P. 2d 761; Carter v. State Bar, (1988) 44 Cal.3d. 1091, 1098, 245 Cal. Rptr. 628, 751 P. 2d, 894; Finch v. State Bar (1981) 28 Cal. 3d 659, 665, 170 Cal. Rpltr. 629, 621 P. 2d 253; Kallen v. Deling (1984) 157 Cal. App. 3d 940, 950, 203 Cal. Rptr. 879.

This rule of law is codified in Rule 3-700(D) of The California Rules of Professional Conduct which requires an attorney whose employment has been terminated to "promptly release to the

client, at the request of the client, all the client papers and property."

The term "prompt" means at least "quick." "Fours month" is not "prompt." In light of the fact that the case was going trial, "promptly" means "immediately". Such refusal is a severe violation of Petitioners' right to effective assistance of counsel.

"The right to counsel is so fundamental that there should never occur any interference with it for any length of time, however brief, absent some compelling reason (emphasis added)." U.S. v. Allen, C.A.S.C. 1976, 542 F.2d 630, certiorari denied 97 S.Ct. 1179, 430 U.S. 908, 51 L.Ed.2d 584 (1976). FJ obviously interfered with Petitioners' right to counsel when it refused to promptly turn over the file while having actual notice of

Petitioners' intention of discharge the law firm possessing the case files.

The fundamental constitutional right to counsel has been long upheld in this nation. In Texas Catastrophe Property Ins. Ass'n v. Morales, (C.A.5 (Tex.) 1992), 975 F.2d 1178, it was declared that a "right to counsel in a civil matter is one of constitutional dimension and should be freely exercised without impingement." The right has been considered even more fundamental than the other rights guaranteed by the Bill of Rights regarding the function of justice. Steadman v. Duff, (.`.C.Fla. 1969), 302 F.Supp. 313. In Elie v. Henderson, D.C.La. 1972, 340 F.Supp. 958, the court clearly stated: "The Constitutional right to counsel is the right of the client to have legal counsel if he wishes, and not the right of the attorney to counsel those who do not seek

his advice (emphases added)." The constitutional right to counsel authorizes a client to have an absolute right to substitute new counsel and such substitution will be effective immediately upon notice by new counsel. Case law in California has also been illustrated in support of this legal norm.[1]

The above discussion of law and the statement of fact has suggested that FJ intentionally and maliciously commingled trust funds, and refused to properly return Petitioners' client's trust fund and files.

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[1] In Kallen v. Delug (1984) 157 Cal.App.3d 940, 950, 203 Cal.Rptr. 879, the court held "a client's power to substitute one attorney for another has little meaning unless its exercise is accompanied by the original attorney's prompt execution of a substitution of attorney. The original attorney's refusal to comply works a serious hardship on the client and puts the client's interest at risk." [Emphasis Added.] The court therefore concluded that an attorney breaches his ethical duty when he uses his refusal to execute a substitution of attorney as a device to protect his fees.

Such refusal is not only in violation of a discharged attorney's absolute duty to return the entire files "promptly", but, most importantly, is extremely harmful to Petitioner's absolute right to terminate the relationship between a client and an attorney. Therefore, such refusal deprived Petitioners of their constitutional right to effective assistance of counsel.

II. PETITIONERS WERE DEPRIVED OF THEIR RIGHT TO FAIR TRIAL AND RIGHT TO ACCESS TO THE CALIFORNIA COURTS WHEN THE CALIFORNIA COURTS RENDERED THE APPEAL MOOT EVEN THOUGH FJ HAS REFUSED TO TRANSFER ALL FILES TO PETITIONERS AND FJ ADMITTED THAT IT KEPT THE FILES

A. The Appeal Was Not Moot When FJ Refused To Comply With Its Absolute Duty To Promptly Transfer The Entire File To The New Counsel And When FJ Admitted that It Still Keeps Files.

FJ asserts that the appeal was moot because it had allegedly delivered "part" of the files in question to Petitioners'

counsel on August 29, 1991, after the trial court's order of August 5, 1991. In fact, FJ admitted that it has still kept part of the original files and copies of all files covered by the order and has refused to turn them over to Petitioners. See Appendix G.

Generally, an appeal will be dismissed as "moot" when, through no fault of respondent, the occurrence of an event renders it impossible for the appellate court to grant appellant any effective relief. Baker v. Humphrey, 101 U.S. 494, 25 L. Ed 1065. Eye Dog Foundation v. State Board of Guide Dogs for the Blind, 67 Cal. 2d 536 (1967); Finnie v. Town of Tiburon, 199 Cal. App. 3d 1 (1988). In this case, through the fault of FJ and its counsel, FJ refused to comply with its absolute duty to promptly turn over the files for approximately three and half months. The

appeal was filed on August 9, 1991. FJ still refused to turn over the complete file to Petitioners. Twenty-four days later, it transferred only a part of the files to Petitioners on August 29, 1991. See Exhibit B. Because FJ did not turn over the entire files, the appeal by definition did not become moot to justify a dismissal. Baker v. Humphrey, 101 U.S. 494, 25 L. Ed 1065 (1879).

Under certain circumstances, a determination of the mootness issue requires examination of the record, after which time a court may deny any motion of dismissal and decide the matter in connection with its review of the merits. Gogerty v. Coachella Valley Junior College Dist., 57 Cal. 2d 727 (1962). The Court of Appeal should have followed this procedure and the precedent in support thereof in handling the present case. When Rocheux

informed the court that FJ had not turned over the entire files, it was clear that the dispute was not settled to constitute an event causing mootness. Wax v. Infante, 145 Cal. App. 3d 1029 (1983).

It is true that courts generally will not express an opinion in a case in which no practical relief can be granted and which can have no practical effect on the litigants before them. St. Pierre v. United States, 63 S.Ct. 910, 319 U.S. 41, 87 L.Ed. 1199 (1943); Matter of Zacherl Coal Co., Inc., D.C.Pa., 9 B.R. 952. However, in this instant case, practical relief is needed because FJ still keeps part of Petitioners' files that FJ should have returned promptly. Obviously, the practical effect is that without the entire file Petitioners cannot effectively pursue the legal interest involved.

In Powell v. McCormack, 395 U.S. 486 (1969), this Court stated that a case is not moot so long as any single claim for relief remains viable, whether that claim was the primary or secondary relief originally sought. Id. at 496. The statement is illustrative for the present case. Petitioners requested the entire files to be transferred to the new attorney but FJ merely returned part of files. Petitioners' request of the return of the entire file, as a single claim, is therefore still viable. The Court of Appeal simply should not have dismissed the case on the ground of mootness.

This instant case poses an issue of broad public interest in this nation: whether a client has an absolute right to terminate the relationship with an attorney and have the files returned. If FJ is allowed to continue keeping Petitioners'

files after the termination of the relationship, this will suggest that a client's absolute right to terminate a relationship with an attorney is not "absolute" but "limited," or is academic not practical. Such precedent will provide meaningless protection of a client's right to counsel when a client decides to terminate his or her relationship with an attorney. The consequence is clear: the attorney-client's confidentiality, policies governing the client's files, legal norms regulating professional conduct and responsibility, and the right to counsel are completely ruined.

Another important point to be made here is that the constitutional issue involved in this case would affect many litigants in the United States as a whole. A former lawyer could refuse to perform his absolute duty to transfer the entire files

to his client. It is the well-established principle that the court should be very cautious approaching the application of mootness in actual cases when the issue involved poses questions of broad public interest. [2] The issue of whether a client can effectively terminate the relationship with his attorney and have his entire file promptly returned after the termination concerns thousands of litigants in this nation and its public interest is obvious.

However, the California Court of Appeal granted, prematurely, FJ's motion to dismiss the case based on mootness. The Court of Appeal should consider first of all the broad public interest involved in

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2. If a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve that issue **even though** an event occurring during its pendency would normally render the matter moot. Re H., 19 Cal App 3d 350, 96 Cal Rptr 791.

this case and thereafter review the facts to examine the merits of the case in order to make a correct decision.[3]

An additional issue is whether withholding the files by FJ for over two years is in compliance with Rule 3-700 (D) of California Rules of Professional Conduct and the holding of Rose v. State Bar, 49 C.3d 646, 262 C.R. 702 (1989). On the basis of the above stated authorities, the Court of Appeal should not dismiss the appeal for mootness. This is particularly true because the facts from the trial court are that the Files were not transferred at the time of appeal. The Court of Appeal has no jurisdiction to determine the factual issues, where the facts are in

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[3]. Because whether or not the Files transferred are incomplete is in great dispute. It is an issue of fact. Such issue cannot be resolved without the process of discovery.

dispute and the fact is not raised in the trial court. Carpenters 46 Northern California Counties Conf. Bd. v. Zweigle, 130 Cal.App.3d 337, 348 (1982). The Court of Appeal has no jurisdiction to determine new facts and FJ cannot raise mootness as a defense when it attempts to re-determine or re-characterize facts, Id.

Petitioners therefore conclude that the appeal was not moot and the dismissal of the case by the Court of Appeal on the ground of mootness is groundless and improper.

B. Petitioners Appeal Should Not Have Been Dismissed Because Mr. Eisen Did Not Have Personal Knowledge

Since the California Court of Appeal dismissed Petitioners' Appeal solely based on the declaration of Mr. Eisen, and since the genuine issue involved in this Action

is whether Petitioners' right to counsel is violated when the incomplete file was returned, Petitioners consider it important to bring this Court's attention to the related issue with mootness: whether Mr. Eisen's declaration could be used as the only basis for the California Court of Appeal to dismiss Petitioners' appeal.

As stated in Dr. Shieh's declaration, Dr. Shieh is in charge of the Rocheux's files since in or about 1988 and became the attorney of record after joining Lewis, D'Amato, Brisbois & Bisgaard as a partner in or about 1989. Rocheux is Dr. Shieh's client and only Dr. Shieh had personal knowledge about the files through five years working experience on the case.

On the other hand, Mr. Eisen was <u>not</u> employed by FJ, did <u>not</u> work on this case and does not have any personal knowledge

about what the "complete" files look like.

There were more than 100 different files to be transferred from FJ to Dr. Shieh's clients. Mr. Eisen was not familiar with each and every file and because he was retained by FJ as a lawyer to litigate with Dr. Shieh at that time for only about three months and was not familiar with the issues and facts of the causes of action.

Eisen misrepresented to the court that Silverstrom, Rocheux's attorney, did not inform him that the files were incomplete. This is false. Attorney Silverstrom specifically informed him in the August 29, 1991 letter that: "Files relating to clients named in the attached lists were not provided to Yvonne Luu when she received other clients' files on August 29, 1991. Presumably, you have not yet been

able to transfer them from your office to Fulbright & Jaworski..... A preliminary examination of the files which FJ turned over to Ms. Luu indicates that they are incomplete ....." See Appendix F.

Mr. Silverstrom was discussing two different groups of clients, those whose files were not transferred on August 29, 1991 (their names were listed in the attached lists to Silverstrom's letter) and those files which were transferred on August 29, 1991 that were incomplete. Rocheux was among those whose files were transferred on August 29, 1991 and were not complete. Of course, Rocheux's name was not in the list because Rocheux was not among those clients who had not received any file at all. This is the reason that Eisen sent Silverstrom a letter to those clients who did not receive any file at all.

Dr. Shieh has been in charge of Petitioners' files for about five years and has personal knowledge about Petitioners' files. Dr. Shieh took charge of Petitioner's files in or about 1988, and became the attorney of record in this action in or about 1989 after joining Lewis, D'Amato, Brisbois & Bisgaard ("LDBB") as a partner. He reviews each and every paper concerning Petitioners' files in this case. Dr. Shieh has been in charge of Petitioners files in this action for approximately two years before he joined Fulbright & Jaworski ("FJ") as a general partner in January 1991.

No one at FJ has better knowledge because this action is inactive. As a general partner at FJ, Dr. Shieh was in charge of Petitioners' legal matters and files in this action. Goss filed a bankruptcy proceeding in or about 1989.

There was no, or almost no, activities between January 1991 and March 1991. No one at FJ has taken any step to protect Petitioners' interest after March 1991. Thus, no one at FJ has handled this case and has knowledge, or at least no one at FJ has wanted to admit having handled this case. Dr. Shieh has much more knowledge about any and all of Rocheux's files than anyone else at FJ and Quinn, Kully & Morrow ("QKM").

In addition, there were more than 100 separate files to be transferred to Dr. Shieh's clients. No one at FJ and QKM has clear knowledge about each and every file. The files to be transferred to Dr. Shieh's clients' lawyers were more than 100. In less than three months, from January to March 1991, no one at FJ has come forward with clear knowledge about each and every file in such period of time. No one at FJ

really knows if Petitioners' files are completely transferred or not.

Mr. David Eisen does not handle this action and has no knowledge as to whether entire files were transferred. No one at QKM has ever become an employee or partner at FJ, and no one at QKM has ever been retained by Petitioners as their attorney. As a matter of fact, Eisen is only FJ's lawyer to transfer Petitioner' files back and forth between FJ and QKM, but he does not know whether each of the 100 files is/are complete in the first place.

Petitioners' attorneys repeatedly requested that David Eisen send him a list of all of Petitioners' files Eisen purported to transfer to Petitioners. However, David Eisen consistently refused to prepare a list of Petitioners files transferred because he may know that the files are misplaced, incomplete or

destroyed. QKM and FJ, as their bad faith tactics: (1) transferred only part of the files and kept Dr. Shieh out of business, and (2) avoided the discovery of their misconduct and their misplacement of the files. Petitioners therefore request that the dismissal by the California Court of Appeal be vacated where it was caused by opposing counsel's false declaration and misrepresentation.

A dismissal may be vacated where it was caused by opposing counsel's false declaration and misrepresentation. See the California Code of Civil Procedure §473. ("CCP"). In the present case, the Court of Appeal made a mistake in finding the appeal to be moot. Based on the ground of mootness, it ordered the dismissal. The action would not have been dismissed but for opposing counsel's false declaration and misrepresentation. Petitioners

conclude that this Appeal is not moot because some of the files have not been transferred and because David Eisen does not have personal knowledge about the files.

III. DUE PROCESS OF LAW WAS VIOLATED WHEN RESPONDENT REFUSED TO SERVE UPON PETITIONERS' ATTORNEY OF RECORD THE MOTION TO DISMISS AND THE RELATED FALSE DECLARATION.

This Court should also review the issue whether the California Court of Appeal lacks jurisdiction to dismiss the appeal because FJ refused to serve upon Petitioners' attorney of record the motion to dismiss and the related false declaration.

On or about August 9, 1993, Dr. Liang-Houh Shieh became one of the attorneys of

record for Petitioners by filing a Notice of Appeal with the Court of Appeal of the State of California. FJ refused to serve its brief, motion to dismiss and Eisen's false declarations upon Petitioners' attorney of record and therefore failed to comply with the rules of the court.

Under California Rules of Court ("CRC") Rule 18, the Court of Appeal may strike any brief which fails to comply with the requirements of the rules of the reviewing court. These rules include the requirement that FJ's brief should be served upon opposing party's attorney of record. CRC Rule 16. A federal statute also requires pleadings and papers to be served upon each of the parties. Rules of Civil Procedure for the United States District Courts, Rule 5(a).

Most importantly, due process of law was violated when FJ intentionally refused

to serve the motion to dismiss and Eisen's declarations upon Petitioners' attorney of record. "The absolute fundamentals of `due process of law' are jurisdiction, adequate notice and a fair hearing (emphasis added)." U.S. V. Certain Parcels of Land in Prince George's County, Md., D.C.Md. 1941, 40 F.Supp. 436. Here, the Court of Appeal by its order of June 14, 1993, expressly rendered the decision that the lack of service upon Petitioners is in effect equal to a lack of filing and that FJ was in default, See Appendix C.

However, before FJ served the motion to dismiss and Eisen's false declaration upon Petitioners, the California Court of Appeal dismissed Petitioners' Appeal not based on the lack of service but solely on the perjured declaration of David Eisen, who had absolutely no knowledge about whether the returned files are complete, and the declaration was not served upon

Petitioner's Attorney of Record either. See Declaration of Dr. Shieh attached herein. Because petitioners' right to due process of law has been violated in the proceeding before the California court, Petitioners hereby request that any pleadings, including FJ's Brief and Eisen's false declaration, which had not been served upon the attorney of record be stricken from the record in its entirety.

CONCLUSION

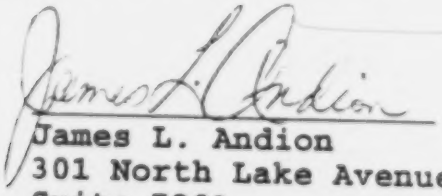
The California Supreme Court's error in denying Petitioner's petition for review is evidenced by the record. The denial operates as an affirmance of the judgment by the California Court of Appeal. This implied affirmance is inappropriate in this so-called context of mootness. Petitioners request this Court to take into consideration the fact that the trial court's order to transfer the entire files

has not been fully carried out --- the entire files have not been transferred. The California Supreme Court ruling denying Petitioner's petition is legally and factually groundless and in violation of Petitioners' right to counsel and to due process of law. It is therefore inconsistent with the U.S. Constitution.

For all the foregoing reasons, this petition for a writ of certiorari should be granted.

Dated: December 8, 1993

Respectfully Submitted,



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APPENDIX A

(FILED on September 15, 1993)
Second Appellate District,
Division Three, No. B 060526
S 034123

IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA

IN BANK

GOSS PLASTIC FILM CORP.,

Plaintiff,

V.

ROCHEUX INTERNATIONAL, INC,

PETITIONERS,

V.

FULBRIGHT & JAWORSKI,

Respondent

Petition for review DENIED.

Arabian

Acting Chief Justice

APPENDIX B

(FILED IN JUNE 17, 1993)

IN THE

COURT OF APPEAL OF

THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION: 3

RE: Goss Plastic Film Corporation

VS.

Eitel, Clair

Rocheux International, Inc.

2 Civil B060526

Los Angeles No. C637726

THE COURT:

Pursuant to RESPONDENT'S REQUEST the appeal filed August 9, 1991, is dismissed.

HINZ

Acting Presiding Justice

APPENDIX C

OFFICE OF THE CLERK

COURT OF APPEAL

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

JOSEPH A. LANE, CLERK

DIVISION: 3 DATE: 06/14/93

RE: Goss Plastic Film Corporation

VS.

Eitel, Clair

Rocheux International, Inc.

2 Civil B060526

Los Angeles, No. C637726

All Counsel:

Counsel for respondent(s) is hereby notified that if their brief is not on file within 15 days after the date of this notice, or good cause shown for relief from default, the appeal will

be submitted for decision upon the record and the appellant's opening brief. (Rule 17b, California Rules of Court).

Very truly yours,

Joseph A. Lane, Clerk

Deputy Clerk

All Counsel Noticed
Second Appellate District
300 South Spring Street, 2nd Floor
Los Angeles, CA. 90013
Phone: (213) 897-2307

Liang-Houh Shieh
1829 S. Euclid Avenue
San Marino, CA. 91102

APPENDIX D

PROOF OF SERVICE

State of California)

)

County of Los Angeles)

Short Title: Goss Plastic v. Rocheux Int'l v. Fulbright

Case No.: Court of Appeal No. B 060526

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 520 South Grand, Eighth Floor, Los Angeles, California 90071. On June 1, 1993, I served the foregoing document described as MOTION TO DISMISS APPEAL; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF DAVID S. EISEN on the interested parties in this action by placing true copies thereof enclosed in

sealed envelopes addressed as follows:

James L. Andion, Esq.
301 North Lake Avenue,
Suite 720D
Pasadena, CA 91101

Honorable Stephen E. O'Neil
Los Angeles County Superior
Court
111 North Hilil Street
Los Angeles, CA 90012

(BY MAIL) I caused such envelope to be deposited in the mail at Los Angeles, California with postage thereon fully prepaid. I am readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion

of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. Executed on June 1, 1993, at Los Angeles, California.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Rosie K. Nishi

Rosie K. Nishi

APPENDIX E

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF LOS ANGELES

Date: August 5, 1991 M. REINOSO,

Deputy Clerk

Honorable STEPHEN E. O'NEIL, Judge

R. DIGGS, E.R.M.

C 637726 C/W c 637727

GOSS PLASTIC FILM CORP., ETC.,

Counsel For Plaintiff

VS JED SILVERSTROM (X)

CLAIM EITEL, ETC., ET AL.,

Counsel For Defendant

DAVIS S. EISEN

(X)

NATURE OF PROCEEDINGS:

MOTION OF PLAINTIFF ROCHEUX INTERNATIONAL, INC., FOR SUBSTITUTION OF ATTORNEYS, AND ORDER COMPELLING MOVANT'S FORMER ATTORNEY TO SURRENDER MOVANT'S FILES, RECORD AND PROPERTY

Motion is granted pursuant to Code of Civil Procedure section 284, conditioned upon Rocheux International, Inc., notifying former counsel, in writing, what deposition they wish with respect to files by the close of business on 8-9-91.

All requests for sanctions are denied.

Notice by responding party.

Dept. 82 Minutes entered: August 5, 1991

APPENDIX F

LAW OFFICE OF

JED MARK SILVERSTROM

301 North Lake Avenue

7th Floor

Pasadena, CA. 91101

Tel: (818) 405-0346

Fax: (818) 405-8830

August 29, 1991

Via Fax 213-622-3799

and Regular Mail

Davis S. Eisen, Esq.

Quinn, Kully and Morrow

520 South Grand Avenue

Eighth Floor

Los Angeles, CA 90071

Re: Shieh v. Ebershoff

LASC No. BC 027441

Dear Mr. Eisen:

Files relating to clients named in the attached lists were not provided to Yvonne Luu when she received other clients' files on August 29, 1991. Presumably, you have not yet been able to transfer them from your office to Fulbright & Jaworski's ("FJ"). Ms. Luu will arrive in FJ's office at 2:00 p.m. on August 30, 1991, to pick up the remaining files.

A preliminary examination of the files which FJ turned over to Ms. Luu indicates that they are incomplete. For example, I know that there have been numerous communications between FJ and Mr. Shieh's clients relating to FJ's purported bills for services, to transfer of the files, and to selection of new counsel. These communications

are part of the clients' files and must be turned over to Ms. Luu when she appears in FJ's office tomorrow afternoon.

Sincerely,

Jed Mark Silverstrom

cc: Mr. Shieh

[litigate\ebershoff\91\de8-29a]

EXHIBIT A-1

(CLIENTS HAVE SIGNED

AUTHORIZATION LETTERS)

Ms. Ling Chen

Angel Toy

BIT Corporation

Yo-Fu Lee

CLW Plastic Bags & Manufacturing Co., Ltd.

Catherine Wang

Chung Shing Textile Co., Ltd. & Happywear

Samuel Lin

Destro Corporation

Fu-Ji Wu

Fu-Ji Wu's Family Members

Ming Jien Ho

Ginze Garden, Inc.

Shinn Jan

Mr. C. H. Huang

Medium Business Bank of Taiwan

George Lu

Quality Suites Hotel

G Lu Investment, Inc.

Charles Liao

Spinner Industry

Juliet Chen

T-A Creations

Mr. Sealand Tsai

Taiwan Hodaka Industrial Co., Ltd.

Andy Chen

Tzeng Long U.S.A., Inc.

Mr. Edward Yue

Yue Li Machine Co.

jl

c:litigate\ebershoff\91\authoriz.2

Letter sent by F & J dated 6/6/91 asking for instructions as to work/transfer of files. No response received from client

A. Wing Hop Fung Ginseng, Inc.

B. Tenduke International Corp.

C. Taiwan Machinery Distributor, Inc.

D. Taifas Corp.

E. T-A Creatons, Inc.

F. Sunshine Inn

G. Sanja Cota Corp.

H. Richland Worldwide Corp.

I. Quality Suites Hotel

J. Proton Corporation

K. Pacific West Litho

L. Multi Video Corp.

M. Kai Hsiang Traffic Appliance

N. Jay-Y Enterprises

O. International Sunglasses Corp.

P. Grand Pacific Financing Corp.

Q. Tony Chu

R. Chang Hwa Commercial Bank

APPENDIX G

QUINN, KULLY AND MORROW

A PROFESSIONAL LAW CORPORATION

EIGHT FLOOR

520 SOUTH GRAND AVENUE

LOS ANGELES, CALIFORNIA 90071

TELEPHONE (213) 622-0300

TELECOPIER (213) 622-3799

September 6, 1991

VIA TELECOPIER

Jed Mark Silverstrom, Esq.

301 N. Lake Avenue

7th Floor

Pasadena, California 91101

Re: L. Shieh v. David A. Ebershoff, et al.

Dear Mr. Silverstrom:

This will respond to your letters of August 29, 1991, converning client files.

Enclosed are executed sub-

stitutions of attorney for Rocheux International, Inc. and Chung Shing Textile Co., Ltd. We do not have substitutions for Yang Machine Tool Co. and the Yangs. Fulbright will sign substitutions for these clients if you send them to us.

We received on September 4, 1991 supposed form file transfer letters purportedly sent by you on behalf of BIT Corporation and Shinn Jan. These transfer letters are, for reasons stated to you many times in correspondence, defective. Also, although the letters are dated July 10, 1991, you failed to send them to us until August 29, 1991. Fulbright will send a letter to BIT Corporation shortly and, if Fulbright is not advised to retain the files, we will notify you that the files can be picked up. With respect to Shinn Jan, Fulbright cannot locate any files.

With respect to files which have been transferred to Mr. Shieh, we are advised no documents were removed from the files prior to transfer (although photocopies were made and retained by Fulbright). Fulbright has just located an additional, closed file relating to Tzeng Long U.S.A. Ms. Luu can pick up this file from Fulbright, but should call Lynne Stevens the day before she intends to arrive. To the extent you feel that files are missing, you might want to check with Mr. Shieh, whom we understand took home from Fulbright a substantial number of files.

One of your letters attaches two lists of clients. We have been advised by Fulbright of the status of these files:

List One

(1) Angel Toy: transferred to Shieh May 22, 1991.

(2) BIT Corporation: referenced above.

(3) CLW Plastic: Fulbright cannot locate any files.

(4) Chung Shing: transferred to Shieh July 10, 1991.

(5) Fu-Ji Wu: Fulbright cannot locate any files.

(6) Ginze Garden: Fulbright cannot locate any files and, in any event, has not received the form transfer letter.

(7) Shinn Jan: referenced above.

(8) Medium Business Bank: Fulbright has not received the form letter.

(9) Quality Suites/G Lu: Fulbright has not received the form letter.

(10) Spinner Industry: Fulbright cannot locate any files and, in any event, has not received the form letter.

(11) T-A Creations: Fulbright has not received the form letter.

(12) Taiwan Hodaka: transferred to

Shieh June 25, 1991.

(13) Tzeng Long: transferred to Shieh May 23, 1991, and see above.

(14) Yue Li: transferred to Shieh May 23, 1991.

List Two

With the exception of Pacific West Litho, Fulbright mailed letters to these clients, advising them that if they did not advise Fulbright to the contrary before September 16, 1991, their files would be transferred to Mr. Shieh. The files of Pacific West Litho were transferred to Mr. Shieh on August 29, 1991.

Sincerely,

DAVID S. EISEN

DSE:hc